

Redacted Copy

Page 2330

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of:

THE TENNIS CHANNEL, INC.

v.

COMCAST CABLE COMMUNICATIONS, LLC

LLC

Complaint Alleging Program

Carriage Discrimination

SECRET FILE COPY ORIGINAL

)

)

)

) MB Docket

) No. 10-204

)

)

) File No.

) CSR-8285-P

)

)

)

Monday,

May 2, 2011

Volume 7

Hearing Room TW-A363

445 12th Street, S.W.

Washington, D.C.

The above-entitled matter came on for  
hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE JUDGE RICHARD L. SIPPEL  
Chief Administrative Law Judge

Neal R. Gross & Co., Inc.  
202-234-4433

APPEARANCES

On Behalf of Comcast Cable  
Communications, LLC

MICHAEL P. CARROLL, ESQ  
ANDREW N. DeLANEY, ESQ  
EDWARD N. MOSS, ESQ  
DAVID B. TOSCANO, ESQ  
of: Davis Polk & Wardwell, LLP  
450 Lexington Avenue  
New York, New York 10017  
(212) 450-4000

DAVID H. SOLOMON, ESQ  
J. WADE LINDSAY, ESQ  
of: Wilkinson, Barker and Knauer, LLP  
2300 N Street, N.W.  
Suite 700  
Washington, D.C. 20037  
(202) 783-4141

On Behalf of The Tennis Channel, Inc.

C. WILLIAM PHILLIPS, ESQ  
PAUL SCHMIDT, ESQ  
NEEMA TRIVEDI, ESQ  
of: Covington & Burling, LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018-1405  
  
(212) 841-1081

LEAH E. POGORILER, ESQ  
ROBERT SHERMAN, ESQ  
STEPHEN A. WEISWASSER, ESQ  
of: Covington & Burling, LLP  
1201 Pennsylvania Avenue, N.W.  
  
Washington, D.C. 20004-2401  
(202) 662-5115

On Behalf of the Federal Communications  
Commission

WILLIAM H. KNOWLES-KELLETT, ESQ

GARY OSHINSKY, ESQ

GARY SCHNONMAN, ESQ

Investigations and Hearings Division

Enforcement Bureau

Federal Communications Commission

1270 Fairfield Road

Gettysburg, Pennsylvania 17325

(717) 338-2505

## T-A-B-L-E O-F C-O-N-T-E-N-T-S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
---------	--------	-------	----------	---------

Jennifer Gaiski	2335		2456	
-----------------	------	--	------	--

Mr. Phillips		2374		2476
--------------	--	------	--	------

Mr. Schnonman		2436		
---------------	--	------	--	--

Joseph Donnelly	2491		2658	
-----------------	------	--	------	--

Mr. Schmidt		2543		2664
-------------	--	------	--	------

Mr. Knowles-Kellett		2646		
---------------------	--	------	--	--

Marc Goldstein	2670		2754	
----------------	------	--	------	--

Mr. Phillips		2690		2759
--------------	--	------	--	------

## E-X-H-I-B-I-T-S

Exhibit No.		Mark	Recd
-------------	--	------	------

## Comcast

78	Gaiski Testimony	2338	2374
----	------------------	------	------

588	Excel Spreadsheet of Three Models	2341	
-----	--------------------------------------	------	--

1302	Apex Database	2467	2475
------	---------------	------	------

76	Donnelly Testimony	2497	2498
----	--------------------	------	------

666	email	2666	
-----	-------	------	--

79	Goldstein Testimony	2671	2672
----	---------------------	------	------

## Tennis Channel

506	Correspondence from Gaiski to Dannenbaum	2390	2391
-----	---	------	------

1 P-R-O-C-E-E-D-I-N-G-S

2 9:35 a.m.

3 JUDGE: Let's go on the record and  
4 I will swear you right in as a witness, ma'am.  
5 WHEREUPON,

6 JENNIFER GAISKI  
7 was called as a witness and, having been first  
8 duly sworn, was examined and testified as  
9 follows:

10 JUDGE: Before you start, program  
11 matters, what have we done this week? Five  
12 days of testimony. Right? And then we've got  
13 the royal couple married.

14 MR. CARROLL: We did.

15 JUDGE: We did that.

16 MR. CARROLL: Osama bin Laden has  
17 been addressed.

18 JUDGE: It has been addressed, but  
19 somebody has to get the long form death  
20 certificate. You know that.

21 (Laughter.)

22 MR. CARROLL: That's true.

1 JUDGE: And Mr. Harris took care  
2 of the stay.

3 MR. CARROLL: Yes.

4 JUDGE: He got that straightened  
5 out in Minneapolis.

6 MR. CARROLL: He did.

7 JUDGE: And I think Mr. Schmidt's  
8 culinary concerns have been addressed.

9 MR. SCHMIDT: For now, Your Honor.

10 JUDGE: For now.

11 MR. CARROLL: It's been a very  
12 successful week I'd say.

13 JUDGE: I think it's been a  
14 wonderful week. So let's see if we can  
15 gratefully and gracefully finish it up.

16 MR. CARROLL: Agreed.

17 JUDGE: Your witness, sir.

18 MR. CARROLL: Thank you, Your  
19 Honor.

20 DIRECT EXAMINATION

21 BY MR. CARROLL:

22 Q Good morning. Could you tell us

1 your name please?

2 A My name is Jennifer Gaiski.

3 Q And where do you work, Ms. Gaiski?

4 A I work at Comcast Cable  
5 Communications.

6 Q And what's your position there?

7 A I'm the Senior Vice President of  
8 Content Acquisition.

9 Q Who do you report to?

10 A I report to Greg Rigdon.

11 Q And how long have you reported to  
12 Mr. Rigdon?

13 A I think he's been with Comcast  
14 about three months.

15 Q Okay. And how long have you been  
16 with Comcast?

17 A A little over 14 years.

18 Q So who did you report to before  
19 Mr. Rigdon?

20 A Matt Bond.

21 Q And very briefly what was your job  
22 progression at Comcast in the 14 years you've

1       been there?

2               A       Oh, I started off as a manager,  
3       was promoted to director, was promoted to  
4       senior director, then vice president, then  
5       senior vice president.

6               Q       And all of those positions in the  
7       same area?

8               A       Yes, sir.

9               Q       Content Acquisition?

10              A       Yes, sir.

11              Q       And we've had discussion of this  
12       previous. But generally what is content  
13       acquisition again?

14              A       It's the licensing of video  
15       content to be shown to Comcast customers on  
16       different platforms.

17                    JUDGE: See, what counsel is  
18       really doing without embarrassing me is he  
19       wants to be sure that I remember what we're  
20       talking about.

21                    (Laughter.)

22                    Don't let that interfere though.



1 Just keep right on going.

2 MR. CARROLL: No, that is just --  
3 We're starting out graciously this week.

4 JUDGE: I was gracious.

5 BY MR. CARROLL:

6 Q Have you prepared some written  
7 direct testimony in this case?

8 A Yes.

9 MR. CARROLL: Your Honor, may I  
10 approach?

11 JUDGE: Please do.

12 MR. CARROLL: This is Comcast  
13 Exhibit 78.

14 (Whereupon, the document referred  
15 to was marked as Comcast Exhibit  
16 No. 78 for identification.)

17 BY MR. CARROLL:

18 Q And can you identify Exhibit 78  
19 for us?

20 A Yes, it is my direct testimony.

21 Q Okay. And is that your signature  
22 on the last page?

1           A       Yes, it is.

2           Q       Very well. You can put that to  
3 the side. I want to ask you just about a few  
4 particulars very brief this morning. In 2009,  
5 I want to take you back to 2009. You were  
6 reporting to who then?

7           A       Matt Bond.

8           Q       Okay. Did there come a point in  
9 2009 when you learned about a proposal from  
10 the Tennis Channel?

11          A       Yes.

12          Q       Do you remember how you learned  
13 about that?

14          A       I was in a meeting in early May  
15 that I attended with Matt Bond whereby Ken  
16 Solomon and his team came in and presented to  
17 us an update on where the channel was and gave  
18 us a proposal.

19          Q       Okay. And did you do any work  
20 after that meeting to follow up on the  
21 proposal?

22          A       Yes, I did two things. I did an

1       economical analysis on the proposal. And I  
2       also spoke to my field folks about their  
3       interest in the proposal.

4               Q       Okay. So let me take each one of  
5       those in turn. The economic analysis, what is  
6       that you're referring to? What did you do?

7               A       From what I recall, I ran three  
8       models. I ran what we call a base case status  
9       quo, a baseline of total aggregate expenses.  
10      And then I ran what our expenses would be if  
11      we move the Tennis Channel to digital classic  
12      D1 and/or what our expenses would be if we  
13      moved it to digital starter.

14              Q       And did you do this all in your  
15      head or did you document it in any way?

16              A       I did it in an Excel spreadsheet.

17                      MR. CARROLL: Okay. Let's see if  
18      we can identify that.

19                      Your Honor, may I approach and  
20      hand something to the witness?

21                      JUDGE: Please do.

22                      MR. CARROLL: This is Comcast

1 Exhibit 588. And, Your Honor, for the rest of  
2 us, this is in our white binder behind Tab C.

3 (Whereupon, the document referred  
4 to was marked as Comcast Exhibit  
5 No. 588 for identification.)

6 It's the document just before the  
7 last set of notes at the end of that tab.  
8 It's the spreadsheet with numbers aside of it.  
9 And it's Exhibit 588. It should look like  
10 this when you get there, Your Honor.

11 JUDGE: We have seen that before.

12 MR. CARROLL: We have. We have  
13 indeed.

14 JUDGE: Okay. I'll tell you.  
15 Maybe we can do something that would be worth  
16 doing. Maybe you could voir dire the witness  
17 and just give us some background about what  
18 her qualifications are in doing this kind of  
19 mathematical work.

20 MR. CARROLL: Sure. Absolutely.

21 JUDGE: Right. I mean if you  
22 would like to do it.

1 MR. CARROLL: Yes. I'll wait  
2 until we're all on the same page. It should  
3 be right in front of Tab D, I think.

4 JUDGE: Right in front of Tab D.

5 MR. CARROLL: Yes, right in front  
6 of Tab D.

7 JUDGE: But you know what I've  
8 done. I hate to tell you this. So I have my  
9 own way of --

10 MR. CARROLL: Okay. Right in  
11 front of this set of notes if you go right --

12 JUDGE: This blue?

13 MR. CARROLL: Yes. It should be  
14 right in --

15 JUDGE: Fooled you.

16 MR. CARROLL: There we go.

17 JUDGE: I knew it all the time. I  
18 just wanted --

19 MR. CARROLL: Just make me work  
20 this morning. I know.

21 JUDGE: That's right.

22 BY MR. CARROLL:

1           Q       Okay. First can you identify  
2 Exhibit 588 for us please?

3           A       Yes, this is my analysis.

4           Q       Okay. Now following up on the  
5 Judge could you explain your background and  
6 training that would relate to preparing  
7 something like this?

8           A       I went to business school. So I  
9 have an MBA. This is a very typical economic  
10 analysis that I've been doing for most of my  
11 14 years at Comcast.

12          Q       And typical in what way? What  
13 does this analysis do and how do you go about  
14 creating it?

15          A       It's showing three cases, the case  
16 as it is today, base case, current subs times  
17 current contractor rates and essentially what  
18 are the total economics that we faced status  
19 quo. And then it's saying, "Well, if we moved  
20 to D1 or digital starter as Ken Solomon  
21 presented in our meeting, how much would our  
22 total aggregate fees increase?"

1           Q     And are each of those cases  
2     presented in the Exhibit 588?

3           A     Yes.

4           Q     And where is each case presented?

5           A     So if you look on the far lefthand  
6     side, Current Contract.

7           Q     Yes.

8           A     It is what I call status quo base  
9     case scenario. At the time we had [REDACTED] million  
10    customers. Option A is the moved D1. D1 is  
11    digital classic. And we at the time had [REDACTED]  
12    million customers. So you can see how I was  
13    moving it from [REDACTED] million to [REDACTED] million.  
14    And you can also see how the rates now have an  
15    additional discount, a [REDACTED] percent discount.

16                     And then Option B was Ken  
17    Solomon's other proposal which was digital  
18    starter. So at the time we were just  
19    beginning to roll out digital starter.  
20    Digital starter is really a technical way of  
21    taking the analog bandwidth and making it  
22    digital.

1 JUDGE: Is those one of those  
2 boxes? Is that what that is?

3 THE WITNESS: Yes. Once a system  
4 goes to digital starter many more customers  
5 needed a digital box. And every TV --

6 JUDGE: And then they pay for it.  
7 Right?

8 THE WITNESS: Every TV needs a  
9 digital box.

10 JUDGE: Digital starter gets  
11 digital box.

12 THE WITNESS: That's right. So  
13 the price of three boxes is included in the  
14 retail package price. And then anything over  
15 that is \$1.99 a month.

16 JUDGE: Anything over three boxes.

17 THE WITNESS: Yes, that's right.

18 JUDGE: And then how --

19 THE WITNESS: So if you have more  
20 than three TVs in your home, then you would  
21 want to rent extra boxes.

22 JUDGE: Okay. And then how long



1 does that last? I mean in other words how  
2 long do you get it for free before you have to  
3 start paying?

4 THE WITNESS: I don't know for  
5 sure. I think that it's always included in  
6 the price.

7 JUDGE: Okay. So digital starter  
8 -- But then if you have more than three TV  
9 sets then you have to pay \$1.00 something a  
10 month.

11 THE WITNESS: \$1.99 a month, yes.

12 JUDGE: Okay.

13 THE WITNESS: How many TVs do you  
14 have?

15 JUDGE: That's not critical to  
16 this case.

17 (Laughter.)

18 THE WITNESS: We have like seven  
19 in our house.

20 MR. CARROLL: So I'm going to stay  
21 on point. But it's difficult. I'm struggling  
22 this morning.

1 JUDGE: Let's go.

2 BY MR. CARROLL:

3 Q And then on the right column, can  
4 you just very briefly tell us what the far  
5 right column shows on Exhibit 588?

6 A Yes. So at the top you see that  
7 I'm cumulating the aggregate fees from January  
8 1, 2010 through [REDACTED]. Our current  
9 Tennis Channel contract expires [REDACTED].  
10 And those are just an aggregate license fee  
11 over that time period.

12 Q For each of the scenarios.

13 A That's right. For each of the  
14 scenarios.

15 Q Okay. And after you prepared  
16 this, do you remember when you did this work?

17 A You can look in the bottom  
18 righthand corner. It looks like I did in  
19 early June.

20 Q Okay.

21 A I think it says 6/8/09 there. I  
22 can't quite read it.

1 JUDGE: Something 12/09. I think  
2 it's a five. Isn't it?

3 MR. CARROLL: Yes, I thought it  
4 was 6/5.

5 THE WITNESS: I'm sorry. That  
6 date you're looking at is the date of the  
7 proposal. 5/12/09 is the date that Ken  
8 Solomon came in and met with us. It's the  
9 date before that. That's my little signature  
10 on when I actually performed the analysis.  
11 And I believe it says June 5 or June 8, 2009.

12 JUDGE: Where are you on that one?  
13 I see it. To the front.

14 THE WITNESS: Yes, to the front.  
15 Exactly. That's my little way of telling  
16 myself when I performed the analysis.

17 MR. CARROLL: Okay. And --

18 JUDGE: That's date of analysis.

19 THE WITNESS: Yes.

20 BY MR. CARROLL:

21 Q And then after you did this work  
22 what did you do with it?

1           A       I brought this down to Matt Bond,  
2       gave it to him, and then I also distributed a  
3       version to our lawyers.

4           Q       Okay.

5           JUDGE:  At that time, you gave it  
6       to your lawyers.

7           THE WITNESS:  Yes, I did.

8           JUDGE:  Was there a legal concern  
9       at that time?

10          THE WITNESS:  Yes, there was.

11          JUDGE:  Can I ask it?

12          MR. CARROLL:  Please.

13          JUDGE:  Just the issue, not the  
14       conversations.  I mean in other words what was  
15       the concern?

16          THE WITNESS:  The concern was that  
17       Matt Bond had been having more and more calls  
18       with Ken Solomon one-on-one.  And Matt Bond  
19       felt as though the relationship was unraveling  
20       and that potentially we would face litigation  
21       with them.

22          JUDGE:  Okay.

1 BY MR. CARROLL:

2 Q So you presented this Exhibit 588  
3 to Mr. Bond.

4 A Yes.

5 Q And was there any conversation you  
6 and he had about it? Do you remember?

7 A It was very brief. We were  
8 sitting in his office. I just ran him through  
9 the economics. He looked at them and we went  
10 on our way.

11 Q Okay. I'm going to come back to  
12 that in a moment. Let me just pick up the  
13 second of the two tasks you identified. I  
14 think you said something -- I wrote down that  
15 you checked with your field folks. We need a  
16 better descriptor than that. So what are you  
17 referring to there? Who did you check with  
18 and what were you checking on?

19 A So at the time Comcast had four  
20 divisions, two graphical divisions, north,  
21 east, west, south. And they were the folks  
22 that I worked through to gauge interest in

1 channels. And there was one person in each  
2 division that essentially is assigned to be in  
3 charge of all of the programming issues,  
4 ideas, pitches that are going on in that  
5 division.

6 Q Okay. And did you check with each  
7 of the four divisions separately or in some  
8 other way?

9 A In this instance I had a call with  
10 them. We wanted to put together a formal  
11 phone call and have a formal discussion about  
12 it.

13 Q Okay. With all of them at once?

14 A Yes.

15 Q And do you remember who the  
16 participants were? Who each of the division  
17 heads were?

18 A Yes. Jen Goldman, Jennifer  
19 Goldman has been the southern division.  
20 Trevor Arp was in what we call the north.  
21 Mike Ortman was in the east. And I think it  
22 was a combination of Vicki Wember and Jay

1 Kreiling who were in the west.

2 Q How do you spell Mr. Kreiling's  
3 name? Do you remember?

4 A K-R-E-I-L-I-N-G.

5 Q Okay. Ms. Wember and Mr. Kreiling  
6 in the west.

7 A Yes.

8 Q Okay. And do you remember what  
9 you learned -- First of all, do you remember  
10 when this phone call -- Was it a phone call?

11 A It was a phone call.

12 Q Okay. And do you remember what  
13 you learned during the phone call?

14 A I generally remember that there  
15 was no significant interest in putting the  
16 Tennis Channel on a more highly distributed  
17 level of service.

18 Q Had you sent each of the division  
19 heads you've identified any materials in  
20 advance of the call itself?

21 A Yes. After we had the meeting  
22 with Ken Solomon, he had one of his folks

1 email me the deck, the presentation. And I  
2 sent that down to the field before we had our  
3 call.

4 Q Okay. And do you remember when  
5 this call was?

6 A It was early June around the same  
7 time that I did this economic analysis.

8 Q Okay. Early June. And now do you  
9 have a memory of what you learned from each of  
10 the division heads on the call?

11 A No, I don't think I can talk to  
12 each one.

13 Q Your memory is just a general  
14 memory that you've given us.

15 A Yes.

16 Q Did you take any notes during the  
17 call?

18 A Yes, I did.

19 Q Would looking at the notes help  
20 you remember more details of the meeting?

21 A I'm sure it would.

22 MR. CARROLL: Your Honor, may I



1 approach?

2 JUDGE: Please do.

3 MR. CARROLL: I'm going to show  
4 the witness what's been marked as Comcast  
5 Exhibit 130 and, Your Honor, this is behind  
6 the document we were just on in the white  
7 book. It's the very next document or should  
8 be after the blue slip. It should be a set of  
9 handwritten notes.

10 JUDGE: What exhibit?

11 MR. CARROLL: Comcast Exhibit 130.

12 JUDGE: I've got it.

13 MR. CARROLL: And this is two  
14 pages of handwritten notes. First of all, Ms.  
15 Gaiski, is this your handwriting?

16 JUDGE: Let me ask. Is there any  
17 objection to her seeing these notes now?

18 MR. PHILLIPS: No, Your Honor.

19 JUDGE: Go right ahead.

20 BY MR. CARROLL:

21 Q Is this your handwriting?

22 A Yes, it is.

1           Q       Okay. And can you identify these  
2 notes?

3           A       Yes, these were the notes I took  
4 on the call.

5           Q       Okay. In the upper left corner,  
6 unfortunately the three-hole punch punched  
7 through the first number. Can you tell us  
8 what the date on these notes is?

9                   JUDGE: Our technology can only go  
10 so far.

11                  MR. CARROLL: That's right.

12                   (Laughter.)

13                  THE WITNESS: It was in June.

14                  BY MR. CARROLL:

15           Q       It was in June. So if that's  
16 June, can you tell us the day in June?

17           A       June 8, '09.

18           Q       Okay. And we're going to go  
19 through these notes very quickly if we can.  
20 And since it's your handwriting, what is the  
21 heading at the top?

22           A       Field Call About Tennis.